## KOK KON SANG v. INSTITUT AKAUNTAN MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
ALIZA SULAIMAN JC
[CIVIL APPEAL NO: WA-11ANCVC-75-06-2018]
25 APRIL 2019

***CIVIL PROCEDURE:*** *Appeal – Notice of appeal – Appeal against two distinct orders – Whether appellant should have filed separate appeal instead of single notice appeal against both orders – Non-compliance with Form 111A – Ambiguity in notice of appeal – Whether nature and scope of decision appealed against unclear – Whether prejudicial to respondent – Whether attempt to relitigate matter already decided by court – Whether notice of appeal defective – Rules of Court 2012, O. 55 r. 5(2)*

The appellant, a member of the respondent and sole proprietor of Messrs Eddie Kok & Co, was accused of two charges of failing to ensure that the said firm had a valid professional indemnity insurance from the time that the public practice began until 15 June 2010, and failing to return the completed questionnaire on revision of practice to the respondent from May 2005 until July 2007. The appellant was thus said to have breached the provisions on Professional Indemnity Insurance and Professional Behavior in the Malaysian Institute of Accountants ('MIA') By-Laws (On Professional Ethics, Conduct and Practice) 2007 ('2007 MIA By-Laws') and on Quality Assurance and Practice Review, and Acts Discreditable to the Profession in the MIA By-Laws (On Quality Assurance and Practice Review) 2002 ('2002 MIA By-Laws'). This amounted to unprofessional conduct as provided under r. 2 of the MIA (Disciplinary) Rules 2002 ('Disciplinary Rules'). The respondent's disciplinary committee, having heard the evidence, unanimously decided that the charges against the appellant had been proven and the appellant was found to have acted in a manner which amounted to unprofessional conduct within the meaning of the Disciplinary Rules. The appellant was accordingly reprimanded, fined RM4,000 and ordered to pay RM3,000 as costs and expenses relating to the disciplinary proceedings before the Disciplinary Committee and the investigations conducted by the investigation committee, for each charge ('DC decision'). Dissatisfied, the appellant mounted a legal challenge in the High Court and the Court of Appeal. However, the appellant did not succeed at both levels of the courts and was therefore, ordered to pay costs. On 30 November 2017, the respondent filed a claim in the Magistrates' Court for the sum of RM24,000 as the amount in arrears. In his defence and counterclaim, the appellant stated that he had been practising as a company auditor since 1979 and had submitted an application for renewal of his audit licence on 28 August 2015 where there were no objections from the Inland Revenue Board, the

Companies Commission Malaysia and the Securities Commission. However, consequent to the respondent's objection in view of the DC's decision, the appellant's application for renewal of his licence was rejected, forcing the appellant to cease practice as a company auditor and suffer loss of his monthly income. The appellant counterclaimed for the loss of professional practice and income from 7 October 2015 and injuries caused to his reputation. Subsequently, several applications were filed by the parties in the court below, *inter alia*: (i) the appellant's application to transfer the case to Shah Alam court, which was dismissed ('encl. 5'); (ii) the appellant's application to strike out the respondent's application under O. 14 of the Rules of Court 2012 ('ROC'), which was dismissed ('encl. 33'); and (iii) the appellant's application to revive encl. 33 which was dismissed ('encl. 53'). The appellant had filed a notice of appeal which makes reference to the dismissal of his applications in encls. 33 and 53 by the Magistrate ('notice of appeal'). Hence, the two applications herein, *ie*: (i) the respondent's application to set aside the notice of appeal under O. 55 r. 5(2) of the ROC ('encl. 7'); and (ii) the appellant's application under O. 14A ('encl. 9'). The respondent submitted that the questions of law posed by the appellant were issues/questions that had already been raised and determined by the court of competent jurisdiction, *inter alia*: (i) the decision of the High Court dated 26 February 2013; (ii) the decision of the Court of Appeal dated 3 March 2014; and (iii) the Order in relation to the application in encl. 23 ('final orders'). Further, the appellant raised preliminary objections that encl. 7 was filed out of time and therefore should be dismissed under O. 18 r. 20 of the ROC and in respect of filing of encl. 7 pursuant to O. 55 r. 5(2) instead of a notice of cross-appeal under O. 55 r. 8.

**Held (allowing encl. 7; dismissing encl. 9):**

**(1)** The appellant's preliminary objections were made without a proper understanding of the ROC and were absolutely without any merit. The appellant's reliance on O. 18 r. 20 was misplaced and the same applied to his contention on the filing of a notice of cross-appeal by the respondent under O. 55 r. 8 of the ROC. Hence, the preliminary objections were dismissed. (para 23)

**(2)** The notice of appeal was not in conformity with Form 111A. Although the notice of appeal stated that it was an appeal against the decision in respect of encls. 33 and 53, it went on to include the reliefs sought by the appellant in respect of encls. 38 and 5. Further, the reasons in support of the appellant's appeal as outlined in the said notice of appeal made reference to, *inter alia*, encl. 44 as an application for stay of proceedings whereas the enclosure was actually the appellant's notice of appeal to the Court of Appeal. In light of the ambiguities and shortcomings in the contents of the notice of appeal being in such

abundance, the nature and scope of the particular decision of the Magistrate which was the subject matter of the appeal was left unclear. This unsatisfactory situation was most prejudicial to the respondent as it was left guessing as to what was the case that it had to meet in the appeal. (paras 26, 28, 29 & 31)

**(3)** The appellant should have filed a separate notice of appeal in respect of the separate and distinct order of the Magistrate being appealed against since there were distinct and separate applications by the appellant and distinct and separate orders of the court for each of those applications. The filing of a single notice of appeal coupled with the various questions which had arisen as a result of the manner in which the contents of the notice of appeal had been presented had certainly cast doubt as to the decision against which the appellant was actually appealing from. (paras 32 & 33)

**(4)** A reading of the notice of appeal clearly showed that the respondent was referring to other applications before the Magistrate, apart from those in encls. 33 and 53. The appellant was obviously attempting to relitigate the matters canvassed in the other applications and to mount a collateral attack on the orders of the court in relation thereto. The cumulative effect of all the factors pointed to a conclusion that the notice of appeal was defective and could not be allowed to stand. (paras 35 & 36)

**(5)** Multiplicity of proceedings tantamount to an abuse of process. Therefore, in the exercise of the power under sub-s. 25(2) of the Courts of Judicature Act 1964, encl. 9 was dismissed by reason of multiplicity of proceedings viewed in light of the final orders. Further, O. 92 r. 1(1) of the ROC provides that any document required for use in pursuance of the ROC should be in the national language and may be accompanied by a translation in the English language. There was no proof that the Malay text of the AIS was affirmed before a Commissioner of Oaths, contrary to the mandatory requirement for the AIS to be sworn or affirmed before a Commissioner of Oaths. Hence, the court found that no AIS of encl. 9 had been filed at all. (paras 40 & 44-47)

**Case(s) referred to:**

*A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors [2015] 4 CLJ 1016 CA* ***(refd)***

*Berjaya Development Sdn Bhd v. Keretapi Tanah Melayu Bhd [2013] 1 LNS 1331 CA*

*Buckland v. Palmer [1984] 1 WLR 1109* ***(refd)***

*C-Ampy Construction Sdn Bhd v. Andalas Jaya Sdn Bhd [2013] 1 LNS 1312 CA* ***(refd)***

*Damayanti Kantilal Doshi & Ors v. Jigarlal Kantilal Doshi & Anor [2002] 8 CLJ 218 HC* ***(refd)***

*Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2010] 1 CLJ 444 CA* ***(refd)***

*Deepak Jaikishan v. A Santamil Selvi Alau Malay & Ors [2017] 5 CLJ 641 FC* ***(refd)***

*Gan Thing Phing v. Ong Gek Kim (No 2) [1999] 7 CLJ 146 HC* ***(refd)***

*Hup Heng Poultry Industries Pte Ltd v. Flavour Right Sdn Bhd [2015] 1 LNS 958* ***(refd)***

A *Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA* ***(refd)***
*Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim [2018] 8 CLJ 409 CA* ***(refd)***
*Lai Kim Loi v. Datuk Lai Fook Kim & Co [1989] 2 CLJ 107; [1989] 1 CLJ (Rep) 61 SC* ***(refd)***
*Lembaga Kumpulan Wang Simpanan Pekerja v. Carimonde Sdn Bhd & Ors [2011] 6 CLJ 451 HC* ***(refd)***
B *Manoharan Malayalam v. Menteri Dalam Negeri, Malaysia & Anor [2009] 2 CLJ 839 FC* ***(refd)***
*Ms Cooling Sdn Bhd v. Gerimis Baiduri Sdn Bhd [2015] 1 LNS 217 HC* ***(refd)***
*Newlake Development Sdn Bhd v. Tetuan Kumar Jaspal Quah & Aishah [2018] 1 LNS 567 HC* ***(refd)***
*Penang Port Commission v. Kanawagi Seperumaniam [2009] 1 CLJ 169 CA* ***(refd)***
C *Teras Maju Utara Bahan Binaan (M) Sdn Bhd v. Tetuan Ramli Amar Jit & Tan [2018] 4 CLJ 696 HC* ***(refd)***

**Legislation referred to:**
Courts of Judicature Act 1964, s. 25(2)
Federal Constitution, art. 152
D Interpretation Acts 1948 and 1967, s. 3
Limitation Act 1953, s. 6(1)(c)
Malaysian Institute of Accountants (Disciplinary) Rules 2002, r. 2
National Language Acts 1963/67, s. 8
Rules of Court 2012, O. 1A, O. 14A, O. 18 rr. 19(1), 20, O. 41 r. 6, O. 55 rr. 2, 3, 5(2), (3), 8, O. 92 r. 1(1)
E Rules of the Court of Appeal 1994, r. 5(3)

*For the appellant - In person*
*For the respondent - Nadeem Rafiq; M/s Steven Thiru & Sudhar Partnership*

*[Editor's note: Appeal from Magistrate's Court, Kuala Lumpur; Civil Suit No: WA-A72NCVC-6505-11-2017.]*
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*Reported by S Barathi*

## JUDGMENT

G **Aliza Sulaiman JC:**

### Introduction

**[1]** The appellant has filed one notice of appeal against my decision in respect of two applications heard before me as follows:

H (a) the respondent's application to set aside the appellant's notice of appeal dated 18 June 2018 (encl. 7) under O. 55 r. 5(2) Rules of Court 2012 ('ROA 2012') which was allowed with cost of RM4,000 subject to allocatur; and

(b) the appellant's application dated 6 August 2018 (encl. 9) under O. 14A
I which was dismissed with cost of RM4,000 subject to allocatur.

**[2]** At the outset, it is observed that on the face of the single notice of appeal filed by the appellant, it does not appear to be in accordance with the provision of r. 5(3) of the Rules of the Court of Appeal 1994 since paragraphs setting out the nature of relief claimed and grounds thereto have been included. Nevertheless, these are my full grounds for the decision rendered in respect of the aforementioned notice of applications.

**The Cause Papers**

**[3]** The following are the affidavits which pertain to encl. 7:

(i) the respondent's affidavit in support ('AIS') affirmed on 26 July 2018 (encl. 8);

(ii) the appellant's affidavit in reply ('AIR') affirmed on 17 August 2018 (encl. 13); and

(iii) the respondent's AIR affirmed on 7 September 2018 (encl. 15).

**[4]** The affidavits filed in connection with encl. 9 are:

(i) the appellant's AIS affirmed on 27 July 2018 (encl. 10);

(ii) the respondent's AIR affirmed on 24 August 2018 (encl. 14); and

(iii) the appellant's AIR affirmed on 6 September 2019 (encl. 17).

**Brief Background**

**[5]** According to the statement of claim filed on 30 November 2017 in the Magistrates' Court, the respondent's investigation committee, *vide* charge sheets dated 18 March 2011 and 22 September 2011, had brought charges against the appellant in the respondent's disciplinary committee cases no. DC-115-2011-02 and DC-124-2011-11 for failing to comply with the Malaysian Institute of Accountants ('MIA') By-Laws (On Professional Ethics, Conduct and Practice) 2007 ('2007 MIA By-Laws') and MIA By-Laws (On Quality Assurance and Practice Review) 2002 ('2002 MIA By-Laws').

**[6]** The appellant, as a member of the respondent and sole proprietor of Messrs Eddie Kok & Co, was accused of two charges *viz.* failing to ensure that the said firm had a valid professional indemnity insurance from the time that the public practice began until 15 June 2010, and failing to return the completed questionnaire on revision of practice to the respondent from May 2005 until July 2007. Thereby, the appellant was said to have breached the provisions on professional indemnity insurance and professional behavior in the 2007 MIA By-Laws and on quality assurance and practice preview, and acts discreditable to the profession in the 2002 MIA By-Laws. This amounts to unprofessional conduct as provided under r. 2 of the MIA (Disciplinary) Rules 2002 ('Disciplinary Rules').

**[7]** The respondent's disciplinary committee, having heard the evidence brought before it on 23 May 2012, had unanimously decided that the charges against the appellant had been proven and the appellant was found to have acted in a manner which amounted to unprofessional conduct within the meaning of the Disciplinary Rules. The appellant was accordingly reprimanded, fined RM4,000 and ordered to pay RM3,000 as costs and expenses relating to the disciplinary proceedings before the disciplinary committee and the investigations conducted by the investigation committee, for each charge ('said DC decision').

**[8]** The said DC decision was conveyed to the appellant *vide* letters dated 23 May 2012. By letters dated 28 June 2012, the appellant was informed that the said DC decision was in force on 20 June 2012.

**[9]** The appellant was naturally unhappy with the said DC decision and mounted a legal challenge in the High Court and Court of Appeal. Unfortunately for the appellant, he was not successful at both levels of the courts and thus was ordered to pay costs.

**[10]** On 30 November 2017, the respondent filed a writ of summons and statement of claim in the Magistrates' Court for the sum of RM24,000 as the amount in arrears consisting of the following:

(i) RM14,000 as fine, cost and expenses in relation to the hearing of disciplinary proceedings before the disciplinary committee and investigations conducted by the investigations committee in connection with Disciplinary Committee Case No. DC-115-2011-02 and DC-124-2011-11;

(ii) RM5,000 as cost awarded in the High Court Kuala Lumpur (Appellate and Special Powers Division) Appeal/Application No. 25-210-09-2012: *Kok Kon Sang (Applicant/Appellant) v. Institut Akauntan Malaysia (Respondent)*; and

(iii) RM5,000 as cost awarded in the Court of Appeal (Civil Appeal) No. W-02(IM)-840-04-2013: *Kok Kon Sang (Applicant/Appellant) v. Institut Akauntan Malaysia (Respondent)*.

**[11]** In his defence and counterclaim, the appellant stated that he had been practising as a company auditor since 1979. On 24 August 2015, he had submitted an application for renewal of his audit licence where there were no objections from the Inland Revenue Board, the Companies Commission Malaysia and the Securities Commission. However, the respondent raised an objection in view of the said DC decision and the appellant's application for renewal of his licence was thus rejected. As a result, the appellant was forced to cease his practice as a company auditor and loss his monthly income. The counterclaim by the appellant was for the loss of professional practice and

income from 7 October 2015 and injuries caused to his reputation at an aggregate sum of RM100,000, costs and such further relief as deemed fit and proper by the court.

**[12]** Subsequently, several applications were filed by the parties in the court below, namely:

(i) the appellant's application to transfer the case to Shah Alam court which was dismissed on 16 March 2018 (encl. 5);

(ii) the respondent's application under O. 14 ROC 2012 for summary judgment which was allowed on 24 May 2018 (encl. 23);

(iii) the respondent's application under O. 18 r. 19(1) ROC 2012 to strike out the defence and counterclaim which was allowed on 8 June 2018 (encl. 27);

(iv) the appellant's application to strike out the respondent's O. 14 ROC 2012 application which was dismissed on 24 May 2018 (encl. 33);

(v) the appellant's application to strike out the respondent's O. 18 r. 19(1) ROC 2012 application which was dismissed on 8 June 2018 (encl. 38); and

(vi) the appellant's application to revive encl. 33 which was dismissed on 8 June 2018 (encl. 53).

The appellant had filed a notice of appeal on 18 June 2018 which makes reference to the dismissal of his applications in encls. 33 and 53 by the Magistrate ('said notice of appeal').

**Enclosure 7: Respondent's Application To Set Aside The Said Notice Of Appeal**

*The Respondent's Submissions*

**[13]** Essentially, the respondent submitted several grounds of procedural non-compliance with the provisions in the ROC 2012 which rendered the said notice of appeal defective and/or an abuse of process and thus, should be struck out.

**[14]** Firstly, the cases of *Ms Cooling Sdn Bhd v. Gerimis Baiduri Sdn Bhd* [2015] 1 LNS 217 and *Newlake Development Sdn Bhd v. Tetuan Kumar Jaspal Quah & Aishah* [2018] 1 LNS 567 were cited in support of the respondent's contention that the said notice of appeal is fundamentally defective for non-compliance with the mandatory requirement under O. 55 r. 5 ROC 2012.

**[15]** Secondly, it is the respondent's submission that the said notice of appeal is ambiguous because it appears that the appellant is seeking to appeal against the decision of the learned Magistrate in respect of the applications in encls. 33 and 53. However, the date of the decision by the learned

Magistrate in respect of those enclosures are in fact 24 May 2018 and 8 June 2018, respectively whereas only 8 June 2018 appears in the said notice of appeal. In any event, the respondent contended that the appellant should have filed two separate notices of appeal, one against the decision of the encl. 33 application dated 24 May 2018 and another against the decision of the encl. 53 application dated 8 June 2018. The respondent found support for this proposition from the decisions in *Berjaya Development Sdn Bhd v. Keretapi Tanah Melayu Bhd* [2013] 1 LNS 1331; [2014] 4 MLJ 606 and *Deepak Jaikishan v. A Santamil Selvi a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors* [2017] 5 CLJ 641; [2017] 4 MLJ 11.

**[16]** In addition, the respondent argued that O. 55 r. 5(3) ROC 2012 makes it mandatory for a record of appeal to contain the order or draft order of the decision appealed from and relying on the judgment in *Teras Maju Utara Bahan Binaan (M) Sdn Bhd v. Tetuan Ramli Amar Jit & Tan* [2018] 4 CLJ 696, failure to do so, as in the case before this court, is fatal.

**[17]** It was finally submitted that the failure by the appellant in complying with the provisions in ROC 2012 as above mentioned, is not rectifiable by O. 1A ROC 2012.

*The Appellant's Submissions*

**[18]** The appellant was not represented by counsel at the hearing of both encls. 7 and 9. Under the circumstances, the written and oral submissions by the appellant were not presented with the clarity and acumen if the appellant had the benefit of an able advocate and solicitor.

**[19]** From a perusal of the appellant's written reply to the respondent's written submission on encl. 7, the bulk of the said reply submission actually touches on issues concerning encl. 9 rather than encl. 7. Nevertheless, the points that this court could decipher from the reply submission that did relate to encl. 7 are as follows:

(i) a preliminary objection was raised that encl. 7 was filed out of time ie, six weeks after the close of pleadings on 5 July 2018 and should hence be dismissed under O. 18 r. 20 ROC 2012. Another objection was also raised in respect of the filing of encl. 7 pursuant to O. 55 rr. 2, 3 and 5 ROC 2012 instead of a notice of cross appeal under O. 55 r. 8; and

(ii) the said notice of appeal is oppressive and baseless and should be struck out under O. 41 r. 6 ROC 2012 since the appellant had complied with all requirements under O. 55 rr. 1, 2, 3 and 5. It is notable that the appellant's submissions did not specifically address the issues raised by the respondent in challenging the validity of the said notice of appeal.

## Decision Of The Court

**[20]** All appeals to the High Court are by way of re-hearing and shall be brought by giving a notice of appeal within 14 days from the date of the decision appealed from (see O. 55 r. 2 ROC 2012).

**[21]** For ease of reference, the relevant provisions under O. 55 rr. 3 and 5 ROC 2012 are set out below:

> Notice of appeal against a decision made after trial (O. 55 r. 3)
>
> 3. (1) **A notice of appeal against a decision made after trial shall substantially be in Form 111** and shall be filed in the Court from which the decision is appealed from.
>
> (2) Any appellant may appeal from the whole or part of a judgment or order and the notice of appeal shall state whether the whole or part only, and what part, of the judgment or order is complained of.
>
> ...
>
> Notice of Appeal against any decision other than a decision made after trial (O. 55 r. 5)
>
> 5. (1) An appeal from any decision other than a decision made after trial by the Subordinate Court shall lie to a Judge in Chambers of the High Court.
>
> (2) **The appeal under this rule shall be brought by filing a notice of appeal in Form 111A** in the Registry of the relevant Subordinate Court, with a copy extended to the Registry of the High Court within fourteen days from the date on which the decision was pronounced and serving a copy of the notice on every party to the proceedings.
>
> (3) **Within one month after the filing of the notice of appeal under this rule, the appellant shall file the record of appeal in the High Court, and the record shall contain copies of**:
>
> (a) the application for the decisions;
>
> (b) all pleadings filed;
>
> (c) all affidavits filed in support of or in opposition to the application; and
>
> (d) **the order or draft order of the decision appealed from**:
>
> Provided that the record of appeal shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.
>
> (emphasis added)

**[22]** The said notice of appeal (encl. 62) is worded as follows:

> SILA AMBIL PERHATIAN bahawa Pemohon yang dinamakan di atas tidak berpuas hati dengan keputusan oleh Magistret Puan Sara Zuriati Binti Zaharifudin pada 8hb Jun 2018 menolak Notis Permohonan Pemohon [Lampiran 33] diatas Aturan 41 Kaedah 6 dan Notis

Permohonan untuk Menghidupkan diatas Aturan 18 Kaedah 19(1) [Lampiran 53] dan merayu kepada Mahkamah Tinggi terhadap keseluruhan keputusan tersebut.

(a) Jenis relief yang dituntut:

A - Respondent's claim of RM24,000/=

1. That re-hearing of the appeal and application filed before Mahkamah Magistret Kuala Lumpur;

2. That the application for reinstatement [Lampiran 53] of Order 18 Rule 19(1) to strike out respondent's application for summary judgment be allowed with costs;

B - Appellant's counterclaim of RM100,000

3. That application under Order 41 Rule 6 [Lampiran 38] to strike out respondent's application under Order 18 Rule 19(1) be allowed with costs;

C - Appeal for Full Trial:

4. That the matter be transferred to Mahkamah Magistret Shah Alam for full trial under Order 33, Rules of Court 2012.

5. Semua prosiding dalam Guaman No. WA-A72NCVC- 6505-11/2017 digantungkan sehingga keputuan terakhir oleh Mahkamah Tinggi;

6. Kos permohonan ini dijadikan kos dalam kausa;

(b) Alasan-alasan yang disandarkan

Respondent's claim of RM24,000/=

1. That respondent's claim is already time barred after 6 years 8 months under Limitation Act 1953;

2. That High Court Judge had granted respondent's Order 14A application on 26.2.2013 that the court is *functus officio* to review its fines of RM14,000/= against appellant;

3. That respondent's claim of RM10,000/= costs instead of RM5,000/= awarded by Mahkamah Rayuan and appellant's offer of RM5,000/= was unilaterally rejected by respondent which is an abuse of court process before this Honorable court.

Appellant's Counterclaim of RM100,000/=

4. Respondent's refusal to recommend appellant's renewal of audit licence had caused Accountant-General Malaysia rejection of renewal in 2015;

5. Respondent had published a big Notice in Accountants Today to reprimand appellant's unprofessional conduct which had tarnished his reputation and creditability;

6. That rejection of appellant's audit license renewal had deprived him of his career as company auditor after 35 years and loss of livelihood of monthly income of RM10,000./=

Mahkamah Magistret Kuala Lumpur:

7. That appellant had filed an application for stay of proceedings [Lampiran 44] pending the final outcome of the appeal for transfer to Mahkamah Magistret Shah Alam;

8. That Puan Magistrate had dismissed appellant's interlocutory applications in favour of respondent's applications on 8th June 2018 which rendered his application under Lampiran 44 an academic exercise.

Bertarikh pada 18 haribulan Jun 2018.

*The Appellant's Preliminary Objections*

**[23]** I have given due consideration to the record of appeal and the written and oral submissions by both parties and it is immediately obvious that the appellant's preliminary objections were made without a proper understanding of the ROC 2012 and are absolutely without any merits. The appellant's reliance on O. 18 r. 20 is misplaced and the same applies to his contention on the filing of a notice of cross-appeal by the respondent under O. 55 r. 8. Hence, the preliminary objections were dismissed.

**[24]** On the other hand, the respondent's objections to the said notice of appeal have solid foundations and are well-supported on the basis of *stare decisis* as will be expounded further below.

*Compliance With Form 111A*

**[25]** As regards the issue of compliance with Form 111A, I have taken cognisance of the two points of submissions by learned counsel for the respondent in respect of the decision by the High Court in the case of *Ms Cooling Sdn Bhd (supra)* where:

(i) the said decision is in connection with Form 111 (the relevant Form applicable to O. 55 r. 3 ROC 2012) whereas the present case involves Form 111A (the relevant Form applicable to O. 55 r. 5 ROC 2012) but both Forms are identical to one another, except for the words "Other Than A Decision Made" in the heading of Form 111A which is absent in Form 111; and

(ii) the words "substantially in compliance with" in O. 55 r. 3 ROC 2012 do not appear in O. 55 r. 5 ROC 2012.

**[26]** It is my considered view that taking into account the wordings in O. 55 r. 5 ROC 2012 that "The appeal under this rule shall be brought by filing a notice of appeal in Form 111A ...", the said notice of appeal must

comply with Form 111A, failing which, the said notice of appeal is defective and susceptible to be struck out. The said notice of appeal is not in conformity with Form 111A because:

(a) the name of the appellant is not stated under the heading "NOTES";

(b) the name and address of the respondent are also absent under the heading "NOTES:"; and

(c) the words "Other Than A Decision Made After Trial" in the heading is missing.

*Ambiguities In The Said Notice Of Appeal*

**[27]** The contents of the said notice of appeal have been set out in full in para. [22] above and evidently, it lacks clarity. Apart from the issues related to the decisions delivered by the learned Magistrate on 24 May 2018 and 8 June 2018 as alluded to in para. [15] above, the description placed after the reference to the application in encl. 33 is that the said application was made pursuant to O. 41 r. 6, when in fact, it was made pursuant to O. 18 r. 19(1) ROC 2012.

**[28]** Additionally, although the said notice of appeal states that it is an appeal against the decision in respect of encls. 33 and 53, it goes on to include the reliefs sought by the appellant where in paras. (a)B and (a)C of the said notice of appeal, the appellant is also seeking for reliefs in respect of the applications in encl. 38 (the appellant's application to strike out the respondent's application under O. 18 r. 19(1)) and encl. 5 (to transfer the case to the Magistrates' Court Shah Alam).

**[29]** Furthermore, the reasons in support of the appellant's appeal as outlined in the said notice of appeal makes reference to, *inter alia*, encl. 44 as an application for stay of proceedings whereas that enclosure is actually the appellant's notice of appeal to the Court of Appeal.

**[30]** It is trite that an ambiguous notice of appeal is defective and would be liable to be struck out. The Court of Appeal had occasion to deal with this issue in *Berjaya Development Sdn Bhd v. Keretapi Tanah Melayu Bhd* [2013] 1 LNS 1331; [2014] 4 MLJ 606 where at pp. 611 - 612, the court found that:

> [16] It is obvious from the notice of appeal filed by the appellant in this case that the appellant did not state clearly which decision and decided on what date that he is appealing against. The notice of appeal simply says that the appellant is appealing against the decision of YA Nalini Pathmanathan J at Kuala Lumpur High court on 18 September 2012 and 10 October 2012 which dismissed all the appellant's application dated 5 September 2012, 14 September 2012 and 18 September 2012. *The notice of appeal does not state which of the three decisions was decided on 18 September 2012 and which was decided on 10 October 2012. Therefore, in our view, the notice of appeal is defective for its ambiguity.*

[17] With regard to the counsel's argument that it is possible for one notice of appeal to be filed for all the three decisions, *we are of the view that, that may be so provided the applications were heard together and the decision was given on one single date, and that the notice of appeal clearly describes the applications involved and the respective decisions.*

[18] We have pointed out earlier that in this case, there were three decisions by the YA Nalini Pathmanathan J at Kuala Lumpur High Court that there are on appeal by the appellant in this appeal. One of the decisions was decided on 18 September 2012. *The other two decisions were decided on 10 October 2012. Reading the notice of appeal filed by the appellant, we are in the dark which decision and related to what matter was decided on 18 September 2012.* Similarly, we also do not know which decision and related to what matter was decided on 10 October 2012. In the circumstances, we are of the view that the filing of one notice of appeal in respect of all the three decisions by the same High Court in this case, is improper for being ambiguous and uncertain. We are of the view that the proper way is to file either three notices of appeal, one in respect of each decision that is appealed against.

[19] In the circumstances, we find that the notice of appeal filed by the appellant in this case is defective; and we allow the preliminary objection.

(emphasis added)

**[31]** In light of the ambiguities and shortcomings in the contents of the said notice of appeal being in such abundance, the nature and scope of the particular decision of the learned Magistrate which is the subject matter of the appeal is left unclear. This unsatisfactory situation is most prejudicial to the respondent as it is left guessing as to what is the case that it has to meet in the appeal.

*A Single Or Separate Notice Of Appeal?*

**[32]** Based on the decision of the Court of Appeal in *Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim* [2018] 8 CLJ 409 which had examined the decision of the Federal Court in *Deepak Jaikishan v. A Santamil Selvi Alau Malay & Ors* [2017] 5 CLJ 641; [2017] 4 MLJ 11, which in turn had referred to the decision of the Court of Appeal in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 CLJ 1016; [2015] 4 MLJ 583, it is my finding that the appellant should have filed a separate notice of appeal in respect of the separate and distinct order of the learned Magistrate being appealed against since there are distinct and separate applications by the appellant and distinct and separate orders of the court for each of those applications. In delivering the judgment of the court in *Khairy Jamaluddin*, Tengku Maimun Mat JCA (now FCJ) said this:

[17] The respondent relied on rule 5(3) of the RCOA which provides that a notice of appeal shall substantially be in Form 1 in the First Schedule and rule 5(4) of the RCOA which states that any appellant may appeal from the whole or part of the judgment or order and the notice of appeal

A shall state whether the whole or part only, and what part, of the judgment of order complained of. In this regard, learned counsel for the respondent took us through the notice of appeal where the appellant specifically stated that the appeal was against the judgment on the main trial. No mention was made as to whether the appellant is appealing against the dismissal of enclosure 129.

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[18] In support of the application, learned counsel had also relied on the decision of the Federal Court in *Deepak Jaikishan v. A. Santamil a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/p Perumal, deceased) & Ors* [2017] 5 CLJ 641; [2017] 4 MLJ 11.

C [19] In response, learned counsel for the appellant argued that a singular notice of appeal is very much allowed provided that the appellant sets out details of the decisions appealed against and particulars which was done in the case at hand.

...

D [31] We are mindful of the fact that in the case of *A Santamil Selvi* (*supra*), leading to the case of *Deepak Jaikishan* (*supra*), there were eight separate applications by eight different respondents whilst in the present case, there were was only one interlocutory application and a main trial involving the same appellant and a main trial involving the same appellant and the same respondent.

E [32] *Nevertheless, in our view, the principle to be distilled from the decision of the Federal Court in Deepak Jaikishan (supra), is not so much about the number of applications or the number of parties but whether there was a distinct and separate application resulting in a distinct and separate order by the court. If there was a distinct and separate application and a distinct and separate order of the court, then there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against*.

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[33] In the instant case, there is no dispute that there were two separate orders issued by the court, namely an order in respect of the main trial where judgment was entered in favour of the respondent and another order in respect of the dismissal of the appellant's interlocutory application

G to amend the defence. Hence, we find that this application falls squarely within the principle enunciated by the Federal Court in *Deepak Jaikishan* (*supra*), which we are bound to follow.

(emphasis added)

H **[33]** The filing of a single notice of appeal in this case coupled with the various questions which have arisen as a result of the manner in which the contents of the said notice of appeal have been presented has certainly cast doubt as to the decision against which the appellant is actually appealing from.

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*Non-filing Of The Order Or Draft Order Of The Decision Appealed From*

**[34]** In terms of the record of appeal, the respondent contended that the appellant has not served, extracted and filed the orders in respect of encls. 33 and 53. What is evident is that the appellant's record of appeal does not contain the draft or sealed orders of the Magistrate for those enclosures.

*Abuse Of The Process Of The Court*

**[35]** A reading of the said notice of appeal clearly shows that the appellant is referring to other applications before the learned Magistrate, apart from those in encls. 33 and 53. In this regard, the appellant is obviously attempting to re-litigate the matters canvassed in the other applications and to mount a collateral attack on the orders of the court in relation thereto. This, surely, the appellant cannot be allowed to do *vide* the said notice of appeal as though it is a "one notice to fit all grievances" the appellant has against the past decisions in the lower court.

**[36]** The cumulative effect of all the factors as outlined in the foregoing paragraphs points to a singular, inevitable conclusion and that is, the said notice of appeal is defective and cannot be allowed to stand.

**[37]** On a final note, I am of the opinion that O. 1A ROC 2012 which provides that the court or a judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with the ROC 2012 is of no assistance to the appellant in view of the flagrant disregard for the procedural requirements of the law on appeals to the High Court from the subordinate courts. I am in entire agreement with the judgment of Yeoh Wee Siam J (now JCA) in *Ms Cooling Sdn Bhd* (*supra*) wherein it was held, *inter alia*, that:

> 22. However, I am of the firm view that for matters where the ROC contains specific provisions which make it mandatory or imperative for compliance, as in the case of O. 55 r. 3(1) and (2), and O. 55 r. 3(4), then O. 1A of the ROC cannot be relied upon to override these specific and express provisions. Otherwise, any party can freely decide not to comply with any of the requirements of the provisions of the ROC and then seek protection and immunity under O. 1A of the ROC. That would certainly be going against the principles of the rule of law, and it is also an abuse of the Court process and procedure.

**Enclosure 9: Appellant's Application Under O. 14A ROC 2012**

**[38]** The appellant posed the following issues in para. 1 of encl. 9 to be determined by the court:

> (a) Where respondent, Malaysian Institute of Accountants had filed charge sheet dated 18 March 2011 by the investigation committee against applicant and respondent filed a claim at Mahkamah Magistret Kuala Lumpur No: WA-A72NCVC-6505-11-2017 on 30 November 2017. whether the claim is time barred after six years, eight months and 12 days under s. 6(1) of Limitation Act 1953 (Act 254) for no cause of action?:

A (b) Where respondent, Malaysian Institute of Accountant had filed an O. 14A application on the point of law that the High Court Judge is *functus officio* to review respondent's claim of RM14,000 other than its appeal board and the High Court Judge YA Dato' Zaleha binti Yusof had granted an order dated 26 February 2013 which was upheld by Court of Appeal; whether the Court of Appeal decision is final and this Honorable
B Court has no powers to reverse its own decision?;

(c) Where applicant had filed and served a sealed application dated 4 June 2018 under lampiran 53 for reinstatement of lampiran 33, Rules of Court 2012 against respondent's O. 14 application for summary judgment without affidavit-in-reply and hearing by Puan Magistrate
C to-date, whether the order for summary judgment dated 24 May 2018 under O. 14 - Lampiran 23 is destitute of legal effect, thus null and void?;

(d) Where the application for judicial review filed by applicant based on costs on cause and the Mahkamah Rayuan at Putrajaya had granted the costs of RM5,000/= in favour of respondent, whether respondent had
D filed false claim of RM10,000/= costs *in lieu* of RM5,000/= awarded by Mahkamah Rayuan Putrajaya on 3 March 2014?;

(e) It the issue in para. (a) above and/or the issue in para. (b) above is/are and the issue in para. (c) and the issue in para. (d) is/are answered in the affirmative, whether the claim of RM24,000/= by respondent should accordingly be dismissed with costs.

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The other prayers in encl. 9 are:

2. That save for the determination of this application and the issues posed hereunder, all proceedings hereunder be stayed pending such determination;

F 3. That the costs arising from this application be provided for; and

4. Such further and/or other relief as this Honorable Court deems fit.

*The Submissions Of The Parties*

**[39]** At the hearing of encl. 9, the appellant made extensive reference to the
G exhibits and case authorities as can be seen from the "written submissions on lampiran 9" (encl. 19) and "oral written submissions on lampiran 9 and 7", which were handed to the court on that day, in an attempt to persuade the court to answer the questions posed in his favor.

**[40]** Mr Nadeem Rafiq submitted that the alleged questions of law posed
H by the appellant in sub-paras. 1(b), (c), (d) and (e) as outlined above are issues/questions that have previously been raised and determined by the court of competent jurisdiction, namely as follows:

(a) decision of the High Court dated 26 February 2013 (see exh. "MIA-12" in the respondent's AIR encl. 15);
I

(b) decision of the Court of Appeal dated 3 March 2014 (see exh. "MIA-13" in encl. 15); and

(c) the order in relation to the application in encl. 23 (see exh. "MIA-8" in encl. 15),

(collectively referred to as "the said final decisions/orders").

**[41]** Consequently, the respondent argued that encl. 9 is an abuse of process as it is a clear attempt by the appellant to challenge the said final decisions/orders by way of a collateral attack and it also amounts to a multiplicity of proceedings. In any event, the appellant should have brought legal proceedings for the specific purpose of appealing/setting aside the said final decisions/orders which he failed to do.

**[42]** In addition, the respondent submitted another reason to support the conclusion that encl. 9 is defective, this time relying on O. 92 r. 1 ROC 2012 and the National Language Acts 1963/67 [Act 32], in view of the fact that the appellant only filed an English version of the AIS whilst the version in the national language was never affirmed, sworn and/or stamped before a Commissioner of Oaths and e-filed in the court.

**[43]** As regards the alleged question of law in para. 1(a) of encl. 9 on whether the suit is time barred, it is the respondent's contention that the question is in essence one of fact and not of law. Further, it was submitted that applying para. 6(1)(c) Act 254, the six year period runs from the date of the said DC decision on 23 May 2012 and thus expired on 22 May 2018. The respondent, having instituted legal proceedings on 30 November 2017, was well within the limitation period prescribed under law.

*Decision Of The Court*

**[44]** Due consideration was given to the arguments advanced by the parties and in my view, the respondent's reliance on paras. [20] - [22] in the judgment of Mohd Nazlan Mohd Ghazali JC (as His Lordship then was) in *Hup Heng Poultry Industries Pte Ltd v. Flavour Right Sdn Bhd* [2015] 1 LNS 958, wherein His Lordship reviewed the case law which established that multiplicity of proceedings tantamount to an abuse of process, is certainly on point. Among the cases cited by His Lordship were *Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd* [1999] 4 CLJ 533; *Damayanti Kantilal Doshi & Ors v. Jigarlal Kantilal Doshi & Ors* [2002] 8 CLJ 218; [2001] 6 MLJ 417; *Buckland v. Palmer* [1984] 1 WLR 1109; *Manoharan Malayalam v. Menteri Dalam Negeri, Malaysia & Anor* [2009] 2 CLJ 839; *Penang Port Commission v. Kanawagi Seperumaniam* [2009] 1 CLJ 169; [2008] 6 MLJ 686; and *Lai Kim Loi v. Dato Lai Fook Kim & Anor* [1989] 2 CLJ 107; [1989] 1 CLJ (Rep) 61; [1989] 2 MLJ 290.

**[45]** Based on the well-established line of authorities, I have no difficulty in exercising the power of this court under sub-s. 25(2) of the Courts of Judicature Act 1964 [Act 91] to dismiss encl. 9 by reason of multiplicity of proceedings arising from that enclosure viewed in light of the said final

A decisions/orders. There can be no clearer case of an abuse of process. The appellant's obstinacy in accepting the truth of the matter, in that he has been heard in the prior civil proceedings and the said final decisions/orders having been duly recorded, has resulted in much time, effort and costs being spent in pursuit of applications which are a lost cause.

B **[46]** On the issue of language of the AIS, O. 92 r. 1(1) ROC 2012 provides that any document required for use in pursuance of ROC 2012 shall be in the national language and may be accompanied by a translation thereof in the English language. The parties and counsel representing them must pay heed to this mandatory requirement, less they shall suffer from the inevitable C consequent of non-compliance. Abdul Malik Ishak JCA in *Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad* [2010] 1 CLJ 444; [2010] 2 MLJ 41 at p. 58 said that the mandatory provisions of art. 152 of the Federal Constitution read together with s. 8 of Act 32 and s. 3 of the Interpretation Acts 1948 and 1967 (Consolidated and Revised 1989) (Act 388) must be D adhered to and any failure would amount to a blatant breach.

**[47]** In this case, the Malay language version of the AIS merely states the words:

Di hadapan saya

E ILLEGIBLES

Pesuruhjaya Sumpah

under what is alleged to be the appellant's signature. There is no proof that the Malay text of the AIS was affirmed before a Commissioner of Oaths who then placed his or her stamp on the affirmation page of the AIS. This is F clearly contrary to the mandatory requirement for the AIS to be sworn or affirmed before a Commissioner of Oaths (see *Gan Thing Phing v. Ong Gek Kim (No 2)* [1999] 7 CLJ 146; [1998] 7 MLJ 351 at p. 356). In these circumstances, this court is entitled to make a finding that no AIS of encl. 9 has been filed at all.

G **[48]** Without an AIS, encl. 9 has no legs to stand on. Nevertheless, I would go on to say that there is merit in the respondent's submissions on the issue of para. 1(a) in encl. 9 involving a question of fact as opposed to law with reference to the case of *Lembaga Kumpulan Wang Simpanan Pekerja v. Carimonde Sdn Bhd & Ors* [2011] 6 CLJ 451. I also agree that on the basis H of the provision in para. 6(1)(c) Act 254, the respondent's civil suit was filed well within the six year limitation period since time started to run from the date of the said DC decision (see *C-Ampy Construction Sdn Bhd v. Andalas Jaya Sdn Bhd* [2013] 1 LNS 1312; [2014] 6 MLJ 599).

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## Conclusion

**[49]** Having outlined the reasons for my decision in respect of encls. 7 and 9, it is apparent that the respondent's case for the former is on firm grounds whilst the opposite can be said as regards the appellant's case for the latter. In the premises, I am compelled to make the orders as aforesaid in para. [1] of this judgment.